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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 20070316

Application Number: 09/891,321
Filing Date: June 27, 2001
Appellant(s): Razumov

Alexander V. Yampolsky
(Reg. No. 36,324)
For Appellant

EXAMINER'S ANSWER

This examiner's answer has been prepared in response to appellant's brief on appeal filed November 30, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(*Applicant and Appellant, Sergey Razumov*)

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. (None.)

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(Claims 1-31 are pending.)

(Claims 14-26 and 31 stand rejected and are appealed.)

(Claims 1-13 and 27-30 have been withdrawn from further consideration.)

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. (No after-final amendments have been filed.)

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal contained in the brief is correct:

I. Claims 14-20, 22, 24-26, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. (NPL), in view of Gazzuolo (US 6,546,309).

II. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. (NPL), in view of Gazzuolo (US 6,546,309), and further in view of Weaver (US 6,404,426).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, official notice, and admitted prior art) relied upon in the rejection of claims under appeal:

Accounting and the Internet	Bailey Jr. et al.	1998
US 6,546,309	Gazzuolo	4/2003
US 6,404,426	Weaver	6/2002

(9) Grounds of Rejection

I. Claims 14-20, 22, 24-26, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. (NPL), in view of Gazzuolo (US 6,546,309).

Regarding claims 14, 16, 18, 19, and 26, Bailey Jr. et al. disclose a method of selling goods, comprising the steps of: selecting human models representing categories of a pre-set classification of goods (styles and sizes/physical characteristics); trying on the goods by the human models of the respective categories, at least one model being assigned to try on goods that belong to a category of the classification (inherent); obtaining body measurements (measurements/sizes) of a customer to determine to which category in the pre-set classification of goods the customer belongs; based on the body measurements, assigning by a computer system to the customer the category (size) that corresponds to a human model having individual characteristics (sizes/measurements) corresponding to the body measurements of the customer; determining evaluation marks by the computer system (inherent: customer's evaluation for example, "buy," "don't buy," etc.) for the goods in the category assigned to the customer; pre-selecting by the computer system, based on the determined evaluation marks, a group of items (the items to be purchased) among the goods in the category assigned to the customer; and, enabling the customer to access said group of items. See, in particular, the paragraph bridging pages 6 and 7, as well as the paragraph immediately thereafter. The method of Bailey Jr. et al., though, does not include that the evaluation marks are quantitative in a range from a lower mark to a higher mark and are pre-set based on evaluating the goods tried on by the

respective model, nor that a model or an expert makes the evaluation or selection. However, it is common in the art for evaluations to be made by experts or the person trying on clothes. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to employ a model or an expert to make the evaluation or selection, because such individuals would be qualified to make a correct evaluation/selection. Regarding the evaluation marks for fit being quantitative in a range from a lower mark to a higher mark, Gazzuolo teaches the use of fit evaluation marks that are quantitative in a range from a lower mark to a higher mark (see, for example, column 9, lines 27-30). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the method of Bailey Jr. et al. so as to use evaluation marks that were quantitative in a range from a lower mark to a higher mark, in accordance with the teachings of Gazzuolo, in order to establish relative preferences for garments having varying degrees of fit.

Regarding claims 15, 17, and 20, the method of Bailey Jr. et al. includes that the customer is enabled to watch video images depicting in motion the human models wearing the pre-selected items; that the goods include clothes items; and, that the pre-set classification of Bailey Jr. et al. takes into account body types of customers (sizes/physical characteristics).

Regarding claim 22, Bailey Jr. et al. do not teach that the classification takes eye color into account. However, it is common in the art to recommend clothing based on a customer's eye color. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to employ the step of taking eye color into account for classification to select clothing that would complement a customer's eyes.

Regarding claims 24 and 25, the method of Bailey Jr. et al. includes that the customer is enabled to access data on additional items associated with each of the pre-selected items (e.g., style variations, etc.), wherein the additional items are pre-selected when the goods are tried on by the human model (inherent).

Regarding claim 31, Bailey Jr. et al. do not teach the step of selecting a threshold of evaluation marks acceptable for the customer, wherein the pre-selected group of items has the evaluation marks higher than the threshold. However, Gazzuolo teaches the step of selecting a threshold of evaluation marks acceptable for the customer, wherein the pre-selected group of items has the evaluation marks higher than the threshold (see, for example, column 12, lines 14-20). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the method of Bailey Jr. et al. so as to have included the step of selecting a threshold of evaluation marks acceptable for the customer, wherein the pre-selected group of items has the evaluation marks higher than the threshold, in accordance with the teaching of Gazzuolo, in order to assist a customer in quickly locating the best fitting garments.

II. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. (NPL), in view of Gazzuolo (US 6,546,309), and further in view of Weaver (US 6,404,426).

Bailey Jr. et al. disclose a method of selling goods, as applied above in the rejection of claims 14 and 20 under 35 U.S.C. 103(a), but Bailey Jr. et al. do not teach that a customer's hair color or skin tone are taken into account. However Weaver discloses a similar method,

and the method of Weaver indeed teaches taking hair color (17) and skin tone (15) into account in making recommendations/selections. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the method of Bailey Jr. et al. so as to take hair color and/or skin tone into account when recommending/selecting items, in accordance with the teachings of Weaver, in order to recommend/select items of clothing that would best complement a particular customer.

(10) Response to Argument

I. Claims 14-20, 22, 24-26, and 31 are unpatentable under 35 U.S.C. 103(a) for being obvious over Bailey Jr. et al. (NPL), in view of Gazzuolo (US 6,546,309).

Regarding the argument that Gazzuolo fails to disclose that the evaluation marks for fit are quantitative in a range from a lower mark to a higher mark, Gazzuolo indeed discloses the use of fit evaluation marks that are quantitative in a range from a lower mark to a higher mark. See, for example, column 9, lines 27-30.

Regarding the argument that Gazzuolo fails to disclose that the evaluation marks are based on the goods being tried on by respective human models, Gazzuolo indeed discloses that the evaluation marks are based on the goods being tried on by respective human models. See, for example, column 2, lines 7-12. In any event, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding the argument that neither Bailey Jr. et al. nor Gazzuolo teach or suggest the step of assigning to the customer, based on body measurements, the category (e.g., size number) that corresponds to a human model having individual characteristics corresponding to the body measurements of the customer, both Bailey Jr. et al. and Gazzuolo each disclose the step of assigning to the customer, based on body measurements, the category (e.g., size number) that corresponds to a human model having individual characteristics corresponding to the body measurements of the customer (i.e., same size). See, for example, page 7, column 1, lines 1-6, of Bailey Jr. et al., and column 14, lines 40-45 of Gazzuolo.

Regarding the argument that adequate consideration has not been given to the particular problems and solutions addressed by applicant's claimed invention, the examiner has indeed given adequate consideration to the particular problems and solutions addressed by applicant's claimed invention, since the references are clearly directed to the same particular problems and solutions.

To the extent that applicant is arguing that the applied prior art references are directed to nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the applied prior art references lie squarely in the same field of applicant's endeavor, and, are

more than just reasonably pertinent to the particular problems with which applicant was concerned.

II. Claims 21 and 23 are unpatentable under 35 U.S.C. 103(a) for being obvious over Bailey Jr. et al. (NPL), in view of Gazzuolo (US 6,546,309), and further in view of Weaver (US 6,404,426).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(11) Related Proceeding(s) Appendix

No decision rendered by any court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For all of the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

3/16/07

Gerald J. O'Connor
Primary Examiner
Group Art Unit 3627

GJOC

March 16, 2007

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